



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

UNITED STATES OF AMERICA

§

VS.

§

CASE NO. 1:15-CR-91

§

CHRISTY BEARDEN

§

§

**FINDINGS OF FACT AND RECOMMENDATION ON PLEA OF TRUE
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b) and the Local Rules for the District Court, Eastern District of Texas, the District Court referred this matter for hearing and the submission of findings of fact and a report and recommendation pursuant to 18 U.S.C. §§ 3401(i) and 3583(e). The United States alleges that the defendant, Christy Lynn Bearden, violated conditions of supervised release imposed by United States District Judge John D. Rainey. The United States Probation Office filed its *Petition for Warrant or Summons for Offender Under Supervision* (doc. #17) requesting the revocation of the defendant's supervised release. The Court conducted a hearing on August 15, 2016, in accordance with Federal Rules of Criminal Procedure 11, 32 and 32.1. The defendant was present and represented by counsel at the hearing. Having heard the evidence, this court factually finds that the defendant has violated conditions of supervision and recommends that such violation

warrants the revocation of her supervised release.

After conducting the proceeding in the form and manner prescribed by Federal Rule of Criminal Procedure 11, the Court finds:

a. That the defendant, after consultation with counsel of record, has knowingly, freely and voluntarily consented to the administration of the plea of true in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Court.

b. That the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, that her plea of true is a knowing and voluntary plea, not the result of force or threats, and that the plea is supported by an independent evidentiary basis in fact establishing each of the essential elements of the conduct.

STATEMENT OF REASONS

A. Procedural History

Christy Lynn Bearden was sentenced on November 18, 2014, before The Honorable John D. Rainey of the Southern District of Texas after pleading guilty to the offense of conspiracy to transport undocumented aliens, a Class C felony. The Defendant was subsequently sentenced to 12 months and 1 day imprisonment followed by a 2 year term of supervised release, subject to the standard conditions of release, plus special conditions to include drug aftercare; mental health treatment; and a \$100 special assessment. On May 1, 2015, Ms. Bearden completed her period of imprisonment and began service of the supervision term.

On August 17, 2015, jurisdiction was transferred from the Southern District of Texas to the Eastern District of Texas. The case has been reassigned to the Honorable Ron Clark, Chief District

Judge. On February 24, 2016, the Court revoked Ms. Bearden's term of supervised release and sentenced her to five (5) months imprisonment to be followed by a new term of supervised release for eighteen (18) months.

B. Allegations in Petition

The defendant must report to the probation officer in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

Specifically, on June 3, 2016, Christy Lynn Bearden was released from custody with the Bureau of Prisons to commence her subsequent term of supervised release. She failed to make contact with the U.S. Probation Office.

C. Evidence presented at Hearing:

At the hearing, the Government proffered evidence in support of the allegation in the petition to revoke. The Government would establish that Mr. Bearden was directed to report to the U.S. Probation Office when she was released from prison on June 3, 2016, but she failed to do so.

Defendant, Christy Lynn Bearden, offered a plea of true to the allegations. Specifically, she agreed with the evidence summarized above and pled true to the allegation that she failed to report as directed in violation of her supervision conditions.

D. Sentencing Guidelines; Findings and Recommended Disposition

The allegations, supporting evidence and plea of true warrant revocation of supervised release. *See 18 U.S.C. § 3583(e)(3).* The Court factually finds by a preponderance of the evidence that the defendant violated a mandatory condition of her supervision by failing to report as directed. This conduct constitutes a Grade C violation under U.S.S.G. § 7B1.3(a)(1). Upon finding a Grade C violation, the Court may revoke the defendant's supervised release. *See U.S.S.G. § 7B1.3(a)(2).*

Based upon the Defendant's criminal history category of III and the Grade C violation, the sentencing guidelines suggest a sentence of imprisonment for a period ranging from 5 to 11 months. *See U.S.S.G. § 7B1.4(a).* Because the original offense of conviction was a Class C felony, the statutory maximum imprisonment term upon revocation is two (2) years, but this maximum is capped at 19 months because the defendant's initial term of supervision was revoked and she served a five (5) month prison term for that revocation. *See 18 U.S.C. § 3583(e)(3).*

The Fifth Circuit states that Chapter 7 of the Sentencing Guidelines regarding the revocation of supervised release is advisory only. *See United States v. Cade*, 279 F.3d 265, 271 n.2 (5th Cir. 2002) (citing *United States v. Montez*, 952 F.2d 854, 859 (5th Cir. 1992); *United States v. Headrick*, 963 F.2d 777, 782 (5th Cir. 1992)). Because Chapter 7 was promulgated as an advisory policy statement and there are no applicable guidelines for sentencing after revocation of supervised release¹, the Court may impose a greater or lesser sentence upon revocation. *United States v. Gonzalez*, 250 F.3d 923, 925 (5th Cir. 2001). Further, a sentence imposed for revocation will be upheld unless it is in violation of the law or plainly unreasonable. *Id.* *See also United States v. Pena*, 125 F.3d 285, 288 (5th Cir. 1997) (citations omitted).

Here, the evidence and the defendant's own admission supports a finding that the defendant violated her supervision conditions. Ms. Bearden pled true, agreed with the Court's recommended sentence for that violation, and waived her right to allocute before the District Court.

Accordingly, based upon the defendant's plea of true, the agreement of the parties, and the evidence presented in this case, it is the recommendation of the undersigned United States

¹ *See U.S. Sentencing Guidelines Manual*, Ch. 7, pt. A, cmt. 1 ("At this time, the Commission has chosen to promulgate policy statements only.")

Magistrate Judge that the District Court accept the plea of true and revoke Defendant's supervised release. The undersigned magistrate judge recommends that the District Court order Defendant to serve a term of **six (6) months** imprisonment, with no additional supervision to follow.

OBJECTIONS

Objections must be: (1) specific, (2) in writing, and (3) served and filed within fourteen (14) days after being served with a copy of this report. *See 28 U.S.C. § 636(b)(1)*. A party's failure to object bars that party from: (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *see Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error of unobjected-to factual findings and legal conclusions accepted by the district court, *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc). The constitutional safeguards afforded by Congress and the courts require that, when a party takes advantage of his right to object to a magistrate's findings or recommendation, a district judge must exercise its nondelegable authority by considering the actual evidence and not merely by reviewing and blindly adopting the magistrate judge's report and recommendation. *See Hernandez v. Estelle*, 711 F.2d 619, 620 (5th Cir. 1983); *United States v. Elsoffer*, 644 F.2d 357, 359 (5th Cir. 1981) (per curiam).

SIGNED this the 16th day of August, 2016.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE